

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HENRY J. FOX,

Plaintiff,

MEMORANDUM & ORDER
13-CV-6436 (MKB) (VVP)

v.

GEICO GENERAL INSURANCE COMPANY,

Defendant.

MARGO K. BRODIE, United States District Judge:

Plaintiff Henry J. Fox commenced this action on November 20, 2013, against Defendant GEICO General Insurance Company, seeking to recover damages under the supplemental underinsured motorist provision of his automobile insurance policy with Defendant, for injuries suffered during a motor vehicle accident between Plaintiff and a non-party motorist, William Murgolo. (Compl. ¶¶ 10, 12–14, 18–20.) Plaintiff moved for summary judgment as to liability, arguing that Defendant was precluded from relitigating liability because the issue had been decided in an “inter-insurance company arbitration” between Defendant and the insurers that provided liability insurance for the Enterprise Rent-A-Car vehicle that William Murgolo was operating when the accident occurred. (Decl. of Seth Bader in Support of Motion for Summary Judgment ¶¶ 3–4, 6, 8.)

On April 3, 2015, the Court referred the motion to Magistrate Judge Viktor V. Pohorelsky for a report and recommendation. (Order dated April 3, 2015.) On August 21, 2015, Judge Pohorelsky issued a Report & Recommendation (“R&R”) recommending that the Court deny Plaintiff’s motion for summary judgment. No objections were filed.

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject,

or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s Report and Recommendation if the party fails to file timely objections designating the particular issue.”).

The Court has reviewed the unopposed R&R, and, finding no clear error, the Court adopts Judge Pohorelsky’s R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Plaintiff’s motion for summary judgment is denied.

SO ORDERED:

s/MKB
MARGO K. BRODIE
United States District Judge

Dated: September 14, 2015
Brooklyn, New York